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JAN 03 2011

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STATE OF MONTANA

December 30, 2010

Of Counsel
WILLIAM B. HANSON

The Montana Supreme Court
Room 323, Justice Building
215 North Sanders
PO Box 203003
Helena, MT 59620-3003

**RE: PROPOSED RULE CHANGES - MONTANA RULE OF CIVIL PROCEDURE AND
MONTANA RULES OF PROFESSIONAL CONDUCT - LIMITED SCOPE
REPRESENTATION**

Dear Members of the Court:

In accord with your order dated October 2, 2010, I would like to provide you with my personal comments regarding the proposed rule changes related to limited scope representation and the unbundling of legal services now pending before the Court.

By way of background, I have been a private practitioner for the past 37+ years, 20 of which have been in Bozeman, Montana. My practice has focused primarily in the field of family law. I am what some describe as an "in the trenches lawyer" as opposed to a "war room lawyer". I am a past president of the Gallatin County, Utah State and Salt Lake County Bars. While practicing in Utah, I served on the Bar Commission which revamped the Utah Rules of Professional Conduct. I have been a member of the Montana State Bar Ethics Committee since approximately 1999. In 2003, I worked with other members of the Committee in recommending to this Court the major revisions of our Rules of Professional Conduct which became effective in April of 2004. My comments as set forth below are personal.

I voted in favor of the recent Ethics Committee Opinion on limited scope representation. I agree with its rationale and conclusion and respectfully urge the Court to not adopt the proposed rule changes for the reasons set forth in that opinion.

I always think it is prudent to follow the old common sense

rule that "If it's not broken there is no need to fix it." Our Rules of Professional Conduct already provide for limited scope representation, (see Rules 1.2(c) & 1.5(b), Montana Rules of Professional Conduct) so long as the lawyer who is going to engage in such representation very carefully follows the rules of securing the informed consent of his/her client prior to undertaking such representation. I believe a further expansion of that Rule as the proposed changes attempt to do is unnecessary and will create problems where there are currently no problems.

From a private practitioner's view point, I see some potential troublesome areas if the Court were to adopt the proposed rule changes.

- 1) It will increase the number of pro se cases to be handled by the district courts and consequently increase rather than reduce their workload. Consider the pro se litigant who hires the lawyer only to draft a complaint. It is then served on the pro se defendant who may or may not hire a lawyer to file a response. The pro se litigants then litigate without lawyers. In my experience, it is a given that pro se litigants, in spite of their good intentions, take far longer in presenting their cases than lawyers who are specifically trained and often times instructed to simplify and expedite their presentations to the Court. Courts are also far more lenient with pro se litigants in trying to explain the process and the right and wrong way of doing things, all of which consumes more of the Court's valuable time.
- 2) Encouraging pro se filings places the represented client at a disadvantage because whenever I have had a pro se litigant on the other side in contested litigation, my client always ends up paying more in attorney's fees than in those cases where both parties are represented by competent lawyers. The proposed rules will create an unlevel playing field in favor of the person who chooses not to hire counsel and unnecessarily runs up the cost of litigation for the represented client.
- 3) Encouraging limited scope representation further commercializes the practice of law and provides new opportunities for the unscrupulous lawyer or the unregulated company to take advantage of unsuspecting consumers of legal services. Consider the lawyer who has never handled a medical malpractice case but is asked to

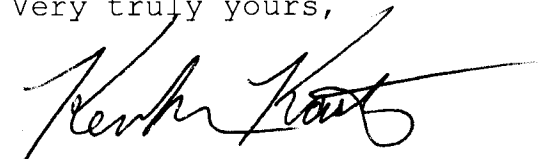
prepare a complaint sounding in medical malpractice. The lawyer sees a way to charge a flat fee \$500/\$1,000/\$2,000 or whatever amount for the project. He goes to the clerk's office, finds a complaint which has been drafted by an experienced medical malpractice lawyer in a previously filed case, uses that as the form for his complaint, drafts it, gives it to the client, who then goes to the court house and files it pro se. Consider also the lawyer who is asked to review a marital settlement agreement for fairness. That simply can't be done on an individual task basis because the lawyer would not have the necessary information to provide the client with the requested opinion. Unfortunately, there are lawyers in our Bar who will do just that if the Court adopts the proposed rule changes. I see the new rules providing fertile ground for lawyers to effectively limit their professional responsibilities and develop ways to "make a fast buck" at the expense of the unsophisticated client. I see companies marketing the sale of specific legal services without proper oversight and regulation by the Bar and/or this Court.

Over the years I have watched how our profession has been cheapened with the advent of advertising. It is slowly but noticeably changing from a profession to a commercial enterprise. While I think the two task forces which worked hard on the proposed rule changes had the best of intentions, I also think they did not thoroughly analyze nor consider the potential adverse effects these rules will have on our profession.

Just because everyone else is doing it does not necessarily mean that what is being done best serves the public and protects the integrity of the legal profession. I don't think the Court should adopt these proposed rule changes.

I thank each member of the Court for taking the time to consider my thoughts on the subject and I hope that they will be of assistance to the Court in its deliberations on these proposed rule changes.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kent M. Kasting", with a stylized, flowing script.

Kent M. Kasting